

ments to St. Louis, Mo., had been examined and found to contain filth; and that the defendants had been advised of the results of the inspections and the analyses, but had made no attempt to correct insanitary conditions.

The complaint alleged further that unless the defendant was restrained, he would continue to ship adulterated and unfit cream and skimmed milk in interstate commerce, and prayed that a preliminary injunction issue, and that upon final hearing, the preliminary injunction be made permanent.

**DISPOSITION:** On January 23, 1946, the court issued a preliminary injunction restraining the defendant from directly or indirectly, by himself or his agents and employees, shipping in interstate commerce from either of his two plants, any milk, cream, or products thereof which were adulterated within the meaning of Sections 402 (a) (3) and (4).

On or about July 1, 1947, the United States attorney filed a petition that the defendant be cited for contempt of court, alleging that recent inspections of the St. Rose and Okawville, Ill., plants had disclosed the continued receipt and acceptance of milk which was unfit for human consumption by reason of its contamination with filth; that the defendant also was operating a plant at Marissa, Ill.; that milk which was unfit for use was shipped by the defendant from the St. Rose plant to the Marissa plant, where it was made into cheese which was shipped in interstate commerce; that the defendant also was shipping milk which was unfit for human consumption from the St. Rose plant to the Okawville plant, where it was made into cheese which was shipped in interstate commerce; and that a portion of the cheese made from unfit milk also was being sold in the State of Illinois under a guaranty that it complied with the Federal laws, although it contained filthy matter and was unfit for human consumption.

The petition prayed (1) that the preliminary injunction be enlarged to include the Marissa plant; (2) that a further temporary injunction issue enjoining and restraining the defendant from shipping milk, cheese, or products thereof in interstate commerce, and from selling such products in Illinois under a guaranty that they complied with Federal laws, which temporary injunction was to apply to the three plants of the defendant; and (3) that the defendant show cause why he should not be punished for contempt of court. The defendant filed an answer alleging (1) that the petition failed to state facts upon which he could be found in contempt of court; (2) that the Government was not entitled to the relief sought in the second prayer; and (3) denying the material allegations of the petition.

On July 8, 1947, the defendant having withdrawn his request for a jury trial and having entered a plea of nolo contendere to the petition, the court overruled the defendant's first defense and granted the Government's petition that the temporary injunction be enlarged to include the Marissa, Ill., plant. The court, however, sustained the defendant's second defense and denied the relief sought in the second prayer of the Government's petition. The defendant was fined \$1,000 upon a plea of nolo contendere.

### EGGS

**17536. Action to enjoin and restrain the interstate shipment of adulterated dried eggs. U. S. v. Howard Green, et al. (Monark Food Products Co.).**  
**Permanent injunction granted. (Inj. No. 58.)**

**COMPLAINT FILED:** June 16, 1943, District of Kansas, against Howard Green, Selma Green, I. Irving Feld, Josephine Selma Feld, Ira Rosenblum, Blanche Rosenblum, Marjorie Ruth Rosenblum, Harry A. Rosenblum, Elaine M. Strauss,

Nell Blondell Peiser, Ernest Peiser, and Suzanne M. Feld, trading as the Monark Food Products Co., a partnership, Hutchinson, Kans.

**NATURE OF COMPLAINT:** The complaint alleged in substance that prior to January 2, 1943, the defendants had entered into a contract to sell and deliver to the Federal Surplus Commodities Corp. a large quantity of dried whole eggs, and in compliance had tendered delivery of the product; that of the eggs so tendered for delivery, 29¾ barrels were determined to consist in whole or in part of a filthy, putrid, and decomposed substance, and to have been unfit for food, and therefore were adulterated and were rejected by the Federal Surplus Commodities Corp.; and that thereafter the defendants shipped 28 barrels of the rejected eggs in interstate commerce to various consignees.

The complaint alleged further that on or about February 13, 1943, the defendants entered into a similar contract and tendered delivery of the eggs called for under the contract; and that approximately 69 90-pound boxes of dried eggs were rejected for the same reason as those rejected in the earlier delivery. The complaint prayed that the defendants be enjoined from introducing and delivering for introduction into interstate commerce dried whole eggs which were adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act, and more particularly the 69 boxes referred to above.

**DISPOSITION:** On June 16, 1943, the court issued a temporary restraining order, and on July 6, 1943, granted a temporary injunction after hearing. Subsequent thereto the court made the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

"1. Defendants are engaged in manufacturing and processing dried eggs for shipment in interstate commerce.

"2. They have two plants, located at Hutchinson, Kansas. The first plant was started June, 1942.

"3. They processed, and, under contract, sold to the Federal Surplus Commodity Corporation a considerable quantity of dried eggs made in this plant. This contract was made prior to January 2, 1943. Twenty-nine and three-fourths barrels of eggs processed and offered under this contract were rejected due to low palatability.

"4. These eggs were subsequently shipped in interstate commerce to Kansas City, Missouri, Chicago, Illinois, and New York City, New York.

"5. Subsequent to the above transaction, defendants opened a second plant in the city of Hutchinson, Kansas, where they processed dried eggs. On or about February 13, 1943, they entered into a contract with the Surplus Commodity Corporation to deliver approximately 60,000 pounds of dried eggs on April 10, 1943. Defendants tendered the 60,000 pounds of dried eggs on April 10, 1943. Defendants tendered the 60,000 pounds of dried eggs under this contract. Of this amount, 69 boxes, each containing ninety pounds, were found to be sour, and were rejected.

"6. This could mean only that these boxes contained decomposed matter which caused fermentation and produced the sour condition which caused their rejection.

"7. The 69 boxes rejected under the second contract were produced shortly after the second plant was established, and it is contended by the defendants, and with some degree of probability, that the defect in these boxes could have been brought about because of defects in the equipment.

"8. It is not claimed, nor do I find, that defendants were motivated by any fraudulent purpose in seeking to introduce in commerce dried eggs unfit for human consumption.

#### CONCLUSIONS OF LAW

"It is my conclusion that the government is entitled to an injunction enjoining the defendants from introducing the sixty-nine boxes of dried eggs above referred to, which have been found to be sour and which are therefore unfit for human consumption, and that the government is entitled to an injunction enjoining the defendants from introducing sour dried eggs into commerce."

On October 25, 1943, the case having come for final disposition and the parties having stipulated that the facts incorporated by the court in findings of fact Nos. 1 to 5, inclusive, and Nos. 7 and 8 were the facts in the case, the court ordered that the defendants be enjoined from introducing into interstate commerce the 69 boxes of dried eggs which had been found to be sour, and that the defendants be further enjoined from introducing into interstate commerce any sour dried eggs.

### FISH AND SHELLFISH

17537. Action to enjoin and restrain the interstate shipment of adulterated fish and fish products and vegetables. U. S. v. J. Lowery Harrison and Else S. Harrison (Kent Packing Co.). Decree for temporary injunction entered by consent. (Inj. No. 144.)

COMPLAINT FILED: July 1, 1946, District of Maryland, against J. Lowery Harrison and Else S. Harrison, copartners, trading as the Kent Packing Co., Rock Hall, Md.

NATURE OF CHARGE: That the defendants from on or about May 16 and 17, 1946, to the date of filing the complaint had been brining, processing, and canning fish and fish products and vegetables under insanitary conditions, the result of the presence of flies, maggots, and rodents, and improper facilities and supervision; that the food products so processed by the defendants were adulterated within the meaning of Section 402 (a) (4) of the Federal Food, Drug, and Cosmetic Act; that the adulterated foods being so prepared and packed by the defendants were being shipped in interstate commerce from Rock Hall, Md., to other states; that various investigations and examinations made by representatives of the Food and Drug Administration had showed the existence of the insanitary conditions; and that the defendants had been warned to remedy the defects existing in their method of manufacture, but had failed to do so.

The complaint alleged further, on information and belief, that the defendants would continue to cause the introduction and delivery for introduction into interstate commerce of adulterated foods unless enjoined from so doing, and prayed the entry of a temporary restraining order, and that after due proceedings, the court enter an order enjoining the defendants from the acts complained of.

DISPOSITION: On July 1, 1946, the court entered an order that the defendants show cause why a temporary restraining order should not be entered as prayed by the complaint. On July 11, 1946, the defendants having consented, a temporary injunctive decree was entered enjoining the defendants, their agents, servants, and employees, and any and all other individuals or corporations in active concert or participation with them, from introducing, or delivering for introduction into interstate commerce, foods, and specifically, canned seafoods, adulterated within the meaning of the Act.

17538. Action to enjoin and restrain the interstate shipment of adulterated and misbranded oysters. U. S. v. Thomas B. Leonard and Elsie C. Leonard (I. L. Leonard & Co.). Preliminary injunction granted. (Inj. No. 208.)

COMPLAINT FILED: February 16, 1949, District of Maryland, against Thomas B. Leonard and Elsie C. Leonard, trading as I. L. Leonard & Co., Cambridge, Md.

NATURE OF CHARGE: That the defendants had been and were at the time shipping in interstate commerce fresh oysters at Cambridge, Md., which were adulterated under Section 402 (b) (2), in that excess water had been substituted in part